

Surface Transportation Board
Review of Commodity, Boxcar, and TOFC/COFC Exemptions
Ex Parte No. 704 (Sub-No. 1)

Summary of Meeting Between Association of American Railroads
and Vice-Chairman Fuchs
Surface Transportation Board offices
June 17, 2019

Meeting Attendees

248002

STB

Patrick Fuchs – *Vice-Chairman*
Lisa Novins – *Attorney-Advisor*
Douglas Pelsey – *Economist*

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AAR

Timothy Strafford
Associate General Counsel & Corporate Secretary

Summary

The meeting began with AAR thanking Vice-Chairman Fuchs for the meeting and the opportunity to discuss this proceeding. AAR pointed to its written filings that lay out the basis for AAR's opposition to the Notice of Proposed Rulemaking's proposal to revoke the exemptions for five commodities. AAR noted that those filings were supported by expert witness testimony, which not only explained why the statutory standard for revocation were not met, but also affirmatively showed the competitive forces which constrain the transportation markets for those commodities.

AAR noted the four themes that run through its pleadings. First, revenue to variable cost ratios above 180% cannot, standing alone, establish the presence of market power or the abuse of market power. Second, the NPRM in this proceeding relies almost exclusively on R/VC ratios for this purpose, and the only other evidence in the record is scant, anecdotal, and rebutted by contradictory evidence. Third, the NPRM proposal fails to consider more limited, targeted alternatives to wholesale revocation of commodity exemptions. Finally, the NPRM and the process by which it was issued were deficient.

There was detailed discussion of the evaluation of market power in particular markets. AAR explained that the Board should be focused on the competitive forces that constrain railroad behavior, which is a broader inquiry than the shipping preferences of an individual customer. AAR suggested that the Board should further consider the analytical tools it uses to evaluate market power. There was further discussion of the types of analytical tools that could be used, including quantitative methodologies and screens.

Vice-Chairman Fuchs noted that record in this proceeding included requests for new exemptions for additional commodities and there was discussion about what commodities that are currently regulated should be exempt from regulation and how the Board should conduct that analysis.

There was discussion of the practical effect of exemption revocation and the relevance of the state of the industry's financial health to exemptions. AAR stated that revocation of the exemptions would reintroduce all of the regulatory requirements of the Interstate Commerce Act, as amended, to the subject traffic. AAR acknowledged that there are no longer administrative burdens associated with tariff filing requirements for regulated traffic, but explained that the administrative burdens of tariff filing were never a principle consideration in the exemption proceedings and that the paradigm established by Congress requires the agency to deregulate to the maximum extent.

In response to a question, AAR outlined the car hire process and explained that the car hire rules apply only to railroad marked cars.

The meeting concluded with the parties thanking each other for participating in the meeting.